

### **DETAILED ACTION**

This Office Action is in response to amendments/arguments filed 11/13/2009. Currently, claims 1-6 and 9-18 are pending in the instant application.

#### ***Response to Arguments***

Applicant's arguments filed 11/13/2009 have been fully considered but they are not persuasive. Applicant argues The Gaylord device provides compressive forces and not only support. However, Applicant has not claimed that his device cannot provide compressive forces along with supportive forces. Moreover, the amount of compressive force of the device depends on how tight the user adjusts it to be, allowing it to provide minimal compressive force if desired. Therefore, this argument is not persuasive.

Applicant argues the Gaylord tensioning means (40) does not adjust the tension of the device (10), but merely bends the rod (42). The tensions means (40) does consequently bend the rod (40), but that is merely a consequence of increasing the tension (col. 8, lines 16-34) of the device (10). Therefore, this argument is unpersuasive.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-6, 9-14 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaylord (US Patent 6,852,088). Gaylord discloses a support (10) to be worn by a patient (P) comprising an encircling band (11) having a portion of stretchable material (col. 6, lines 13-17) that is uniformly stretchable along the entire circumference of the band (11) and the band inherently has a tension after application. The band (11) includes a tensioning means (40) located within a pocket (51) on a front surface of the band (11) that is actuatable by the patient to vary the tension of the band between a base tension and another tension. The band (11) would automatically return to the base tension after handles (53) are released by the patient, if the patient has not attached the hook and loop material of the handles (53) to the band (11). The handles (53) are removeably attached to the band (11) via hook and loop fasteners. The band (11) is secured around the patient (P) with hook and loop fasteners (col. 6, lines 48-50). The band (11) is of uniform length and the support (10) lacks a mechanical moving part for mechanically adjusting its tension. The Gaylord device is sized to fit about the knee of a patient. However, it would have been obvious to one of ordinary skill in the art to size the device to fit around the user's chest, since a change in size is generally

recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claim 14, the base tension is established when the first securing means (12, 13) are attached the band (11), as shown in Figure 12.

With respect to claims 9, 17 and 18, Gaylord teaches all the elements of the claimed invention; therefore, the method step would have been obvious to one of ordinary skill in the art because they would have resulted from the use of the device. The patient obviously would secure the band to body during the exhaling phase if the person secures the device while breathing naturally.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gaylord (US Patent 6,852,088) in view of Castel (US Patent 6,068,606). Gaylord substantially discloses the claimed invention; see rejection to claim 1 above. Gaylord fails to disclose shoulder straps. However, Castel teaches a circumferential support (Fig. 5) comprising shoulder straps (58). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Gaylord device with shoulder straps, as taught by Castel, in order to stabilize the device and prevent downward, vertical movement when the device is applied to the patient's torso.

#### ***Allowable Subject Matter***

Claims 15 and 16 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of

the base claim and any intervening claims. The prior art of record fails to teach or suggest the pair of handles are located within the pockets on the front of the vest and are hidden from view by the pockets when at base tension.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **BRANDON JACKSON** whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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